IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 523 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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REVABHAI SOMABHAI VAGHELA - Appellant(s)
Versus
DEPUTY ENGINEER - Defendant(s)

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Appearance :
MR NR TANDEL for Appellant(s) : 1,
M/S TRIVEDI & GUPTA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Commissioner for Workmen's Compensation(for short, 'the Authority'), Ahmedabad passed in W.C. Appeal No.152 of 1981 dated 16.11.1983.

2.0 The brief facts of the case are that son of the appellant was working with the opponent as casual employee. On 15.06.1981, deceased-Kanjibhai was instructed by opponent-employer to

repair the drainage line. While the deceased-Kanjibhai was digging the drainage line, posionous gas spread and he fell into the drainage and later on expired. Therefore, the present appellant being heir and legal representative of the deceased-Kanjibhai preferred an application claiming compensation.

2.1 In the said application, after hearing the parties, the Authority passed the judgment and award which is under challenge in this appeal.

3.0 Heard, learned Counsel for the parties. From the documents placed on record it appears that the deceased-Kanjibhai was working with the opponent as a casual employee and he was paid Rs.8.85/- per day. The said fact is supported by the written statement of the opponent produced at Exh.10/1. The case of the appellant before the Tribunal was that the deceased-Kanjibhai lost his life during the course of his employment while he

was digging drainage line, on instructions from the opponent. The case of the appellant is supported by the 'Post-Mortem' report produced at Exh.7/1 wherein it has been stated that the deceased-Kanjibhai died on account of Asphyxia caused on account of drowning. The evidence of the appellant are not challenged by the opponent. Hence, the Tribunal has rightly held that since the deceased-Kanjibhai lost his life during the course of his employment, the appellant is entitled to compensation.

3.1 As regards the contention of the learned Advocate for the appellant that the Authority ought to have imposed penalty on the opponent since the opponent failed to deposit the amount of compensation, though, he was aware of the death of the Kanjibhai, is concerned, it would be relevant to refer to a decision of this Court passed in the case of ***"Smt. Jiviben Chana & Ors. Vs. Shah Karsan Lakha"*** reported in 1983 24(1) GLR 134 wherein it held as under,

> “The question of interest and penalty goes together. The first part is with regard to the interest and the Commissioner has to form an opinion whether there is justification for the delay or not. In the present case, not only there is delay but the employer has tried its utmost to defeat the claim of the appellants for compensation. The employer has tried to avoid his liability to make the payment and the widow and minor children of the deceased have been dragged into litigation upto the High Court for compensation for the death of deceased. Considering the facts and circumstances of the case, the Hon'ble Court ordered that the employer should pay penalty to the extent of 25% of the amount of compensation.”

3.2 In the case on hand, it transpires from the documents placed on record that while sending notice dated 19.10.1981 claiming compensation, the appellant had not calculated the amount of compensation correctly, and hence, the opponent was justified in insisting for correct computation of the compensation. Hence, the aforesaid contention requires to be rejected. However, the Authority has compensated the aforesaid aspect by awarding compensation from the date of death of Kanjibhai, instead of from the date of application. Therefore, the present

appeal deserves to be dismissed.

4.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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